

HUMAN
RIGHTS
WATCH

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Global Trends in LGBT Rights During the Covid-19 Pandemic

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Director, Lesbian, Gay, Bisexual, and Transgender Rights Program

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It's impossible to evaluate what the year 2020 looked like from the perspective of lesbian, gay, bisexual and transgender people's rights without recognizing how Covid-19 put a spanner in the works and made for an especially tumultuous year, including for LGBT people. The Covid-19 pandemic exposed fault lines of inequality, leaving some more vulnerable than others regarding infection, prognosis, and economic impact – including within LGBT communities. In

countries where LGBT people face social stigma, moral opprobrium and legal discrimination, they have fewer economic opportunities, and more likely to be poor, particularly in contexts where some LGBT people were left out of government's economic recovery measures. While struggling with the fallout of Covid-19, LGBT people also contended with an onslaught of run-of-the-mill homophobia and transphobia, wielded by governments, politicians and ordinary members of the public.

Anti-LGBT bias was directly evident in responses to Covid-19 in all regions of the world. In Uganda police detained some 20 LGBT homeless youth on spurious charges of breaking Covid-19 restrictions and tortured them in prison. In the Philippines, village officials humiliated LGBT people while enforcing curfew. In South Korea, social media users scapegoated LGBT people after some media linked an outbreak to gay clubs. In Panama, police and private security officials discriminated against transgender people while enforcing a gender-based quarantine. Hungary's populist leader Viktor Orbán used Covid-19 emergency powers to rush through discriminatory legislation against transgender people.



Rainbow flags for sale are photographed on June 24, 2017.

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Rejecting Rights

The US government under former president Donald J. Trump sought to push back against rights claims related to sexual orientation and gender identity, sending a dangerous signal to governments around the world that such rights are disposable. It established a Commission on Unalienable Rights (CUR), framed as a corrective to a so-called “proliferation of rights.” The commission set out to distinguish between fundamental and so called extraneous rights, creating a false hierarchy in which women’s rights and LGBT rights were at the bottom rung and property and religious rights at the top. In short, the CUR sought to create a US blueprint for rights at odds with principles of universality and indivisibility. The CUR was formed in the context of a roll back of LGBT rights in the US under the banner of religious exemptions, most notably a systematic attack on the rights of transgender people.

In one retort to the Trump administration’s attempts to circumscribe rights, the US Supreme Court declared that federal law bans employment discrimination based on sexual orientation and gender identity. It interpreted reference to “sex” in Title VII of the Civil Rights Act, which makes it illegal for employers to discriminate in employment on various grounds, as inclusive of sexual orientation and gender identity, in a ruling with far-reaching implications for other non-discrimination protections, in the US and potentially elsewhere. Any ambiguity in the existing law would be dispelled if the US Congress reintroduces and passes the 2019 Equality Act, a bill passed by the US House of Representatives but stalled in the Senate, and which expressly prohibits discrimination based on sexual orientation and gender identity in education, housing, public spaces, federally funded programs, credit, and jury service. Congressional Democrats and the administration of Joseph R. Biden have both signaled their intention to prioritize the bill this session. Given that so many important advances have been made through the US courts, the appointment of three conservative judges to the US Supreme Court, and dozens to federal courts throughout the country, is a concern for the enduring protection of LGBT rights in the US. A ruling on *Fulton v. City of Philadelphia*, which asks whether Philadelphia may require agencies to abide by its nondiscrimination policy and place foster kids with same-sex couples, is expected in 2021 and will serve as a bellwether for court protection of LGBT people’s rights.

The United Kingdom has become a vocal battleground over trans rights, as an unusual alliance of social conservatives, some feminists and their supporters on the left have aligned in disavowing transgender identity, based on an essentialist view of gender as immutable, and presenting it as a threat to women and children, and the protection of women and trans people’s rights as a zero sum game. In December the High Court ruled that children under 16 could not consent to drugs known as puberty blockers, designed to give trans identified youth time to decide on gender transition by delaying the onset of puberty. Puberty blockers are part of the standard of care for trans youth in several countries including the Netherlands and the US. A former patient had brought suit against the Tavistock clinic, the only National Health Service gender clinic, saying she had not been adequately assessed by the clinic before being placed on puberty blockers and now regretted her subsequent decision to transition. The case occurs in a politically charged environment in which some groups are pushing back against trans inclusion, to the detriment of trans

youth who are particularly vulnerable, with limited treatment options. In this case, the court unfairly singles out transgender care for heightened scrutiny, a particularly significant blow after the conservative government of Prime Minister Boris Johnson failed meaningfully to amend the Gender Recognition Act in response to trans groups' demands for a rights-respecting path to legal gender recognition, a move the previous Conservative government had promised. It is likely that trans issues will remain at the center of ongoing culture wars, in the UK and elsewhere. In politically charged times those perceived to embody ambiguity are invariably singled out for heightened scrutiny.

Meanwhile, Poland and Hungary hard right conservative governments stoked anti-LGBT sentiment in the name of family values, obscuring the real objective: a distraction from their anti-democratic power grabs. In addition to anti-trans legislation, Hungary banned adoptions by same sex couples, while Poland's president likened LGBT to an ideology worse than communism, signed a "Family Charter" pledging to block gay marriage, adoption by same sex couples, and the teaching on LGBT issues in schools, and also encouraged the increasing numbers of local authorities declaring themselves to be "LGBT free" zones.

While the US and UK saw some claw back of rights related to sexual orientation and gender identity, Egypt refused to recognize the terms "sexual orientation" and "gender identity" at all during its Universal Periodic Review, the peer review mechanism of the UN, effectively denying the existence of LGBT people—while routinely detaining them. Egypt is one of the worst offenders in a context of criminalization, violence and discrimination in all regions of the world, detaining dozens of LGBT people and submitting them to abuses including forced anal exams. In June, activist Sarah Hegazy, who had been detained, tortured and sexually assaulted in an Egyptian prison for having the temerity to wave a rainbow flag at a music concert in Cairo in 2017, took her own life in exile in Canada. Despite Egypt's appalling rights record, condemnation from other governments is inadequate, since Egypt is seen by allies as a strategic security partner—a shortsighted view that does not consider the long-term consequence of bolstering a regime that systematically rides rough shod over human rights.

Abuses in Medical Settings

Egypt was not alone in performing unscientific forced anal exams, that can rise to the level of torture: medical practitioners in Tunisia, Uganda, Tanzania, and Sri Lanka, among others, were complicit in performing them in 2020.

The year saw a growing international momentum for an end to conversion therapy, the practice of attempting to change an individual's sexual orientation or gender identity. Countries including Albania, Australia, Canada, France, Germany, Malta, Ireland, New Zealand, Spain, United Kingdom, have either enacted some form of ban or taken steps towards doing so. The EU has also called on states to ban the practice. The UN Independent Expert on Combatting Violence and Discrimination based on Sexual Orientation and Gender Identity presented a report to the UN on the topic. Conversion therapy has been shown to cause considerable harm, especially to children. In some instances, it is regarded as a form of torture or cruel, inhuman and degrading treatment. That said, there is room for caution given some

jurisdiction's reliance on vague and overly broad definitions of what constitutes 'conversion therapy' and overreliance on punitive criminal penalties that may themselves further violate rights. A rights-respecting, holistic approach is called for including tailored legal bans, public education, and psychosocial support for survivors.

Boston Hospital became the second major children's hospital in the US (joining Lurie's Children's Hospital in Chicago) to refine its standard of care for intersex children, reversing course on conducting some cosmetic, non-consensual surgeries. These developments auger well for an end to medically unnecessary, non-consensual surgeries on intersex children, although a legislative effort to ban such surgeries in California was unsuccessful. As the new year dawned, it brought promising news that India's child rights agency was recommending a country-wide ban on these so-called "normalizing" surgeries.

Unexpected Allies

In October, a video documentary was aired on the life and times of Pope Francis that included an extract from an interview in which he expressed support for civil unions. Despite the fact that official doctrine of the Catholic Church remains unchanged, Pope Francis has had a moderating influence with regard to discrimination based on sexual orientation--both through his 'who am I to judge?' stance and his refocus on critical issues of our time such as poverty, inequality and climate catastrophe over traditional sexual moral issues. His endorsement of civil unions takes this stance a step further, lending the Vatican's weight to a message long advanced by gay advocacy groups that society will not fall, and will indeed be strengthened if the civil, secular law provides orderly recognition of same-sex relationships.

Going into 2021, LGBT rights advocates should build on successes challenging medical abuses--while being wary of resorting to criminalization as a one-size-fits-all solution—and should push back against efforts to narrow the scope of what constitutes a human right or who should enjoy such rights. They should also be mindful of the stark reality laid bare by the Covid-19 pandemic: fault lines of inequality underlie every social movement, and if struggles for the human rights of LGBT people leave out those who are socially and economically marginalized, only some will benefit.

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